

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2383 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNITED INDIA INSURANCE CO.LTD.

Versus

JIGNESH RAMANBHAI PATNI & ORS.

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Appearance:

MR PV NANAVALI for Petitioner

MR BG JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/12/98

ORAL JUDGEMENT

Admit. Mr. B.J.Jani, the learned advocate representing the opponent no.1 waives the service of notice of admission. The respondent no.2 is served with the notice before the appeal was admitted, but he did not remain present. He being a driver is also not necessary party. The notice of admission qua him is dispensed with.

2. Being aggrieved by the judgment and award dt. 26th February, 1998 passed by the Motor Accident Claims Tribunal for the City of Ahmedabad in Motor Accident Claim Petition No. 64 of 1990 directing the appellant and respondent no.2 to pay Rs. 73,300/- to the respondent no.1 together with running interest at the rate of 15% p.a. from the date of the petition till realisation, the respondent no.2- Insurance Company has preferred this appeal.

3. Necessary facts may, in brief, be stated. On 23rd March, 1989 at 4-00 p.m., the respondent no.1, who is the original petitioner was sitting on the road side to answer natural call. At that time, the respondent no.2 (original opponent no.1) reached there driving his auto rickshaw bearing GQE 4384. He was driving the rickshaw at the excessive speed endangering human life. He lost the control over it and rickshaw straight way rushed towards the respondent no.1, and hitting him caused injuries on head and other parts of the body. The respondent no.1 was then taken to the hospital for treatment. He then filed the motor accident claim petition before the Tribunal for making the loss good. He prayed for the award of Rs. 1,00,000/-. The Tribunal, appreciating the evidence adduced by the parties before it, found that the respondent no.1 succeeded in establishing his claim to the extent of Rs. 73,300/- . The award, therefore, came to be passed for the said amount, directing the respondent no.1 and the appellant to pay jointly and severally. Being aggrieved by such order, the Insurance Company who is the insurer of such rickshaw, has preferred this appeal.

4. The appellant challenges the award only on one point. According to it, the liability under the contract of insurance was limited to Rs.50,000/-. The Tribunal, therefore, ought not to have fastened with liability in excess of Rs.50,000/-. In this case, however the award is passed whereunder it is directed to pay Rs.73,300/jointly and severally. Thus the liability of Rs.23,300/- foisted on the Insurance Company is not just. To this extent, therefore, the award is required to be modified. For rest of the award, there is no grievance.

5. At the time of submissions, in order to satisfy the court as well as the learned advocate Mr. B.J.Jani for the respondent no.1, the learned advocate for the appellant showed the Insurance Policy. A perusal thereof makes the picture clear. For general liability, premium of Rs.48/- is charged and no more premium or extra

premium is charged for third party liability in excess of the statutory liability which is limited upto Rs.50,000/- It may be mentioned that the incident happened on 23rd March, 1989 when the old Motor Vehicle Act was in force, and therefore, as per the provisions of that old Act, statutory liability of the Insurance Company was limited to the extent of Rs. 50,000/-. When in this case, as per the Policy, no extra premium is charged for unlimited liability towards the third party the Insurance Company ought not to have been fastened with the liability in excess of Rs.50,000/-. The Tribunal has fallen into error in construing premium which is charged at Rs.48/-. No doubt, Rs.40/- are charged for the statutory liability not exceeding Rs.50,000/- and Rs.8/- are charged not for the third party risk in excess of the statutory liability but for the liability qua the driver and owner of the vehicle involved in the accident, but the premium of Rs.8/levied by the Insurance Company is erroneously interpreted by the Tribunal holding that it was the extra premium charged qua the third party risk in excess of the statutory liability. In view of the matter, the award is required to be modified allowing the appeal, so far as it relates to the liability of appellant in excess of Rs.50,000/-.

6. In the result, the appeal is allowed partly. The award passed by the Tribunal at Ahmedabad is modified to the effect that the appellant and respondent no.2 shall jointly and severally pay the sum of Rs.50,000/- (Rs. Fifty thousand only) to the respondent no.1 with simple interest at the rate of 15% p.a. from the date of the filing of the petition till realisation, and the respondent no.2 alone shall further pay Rs.23,300/- (Rs. Twenty three thousand three hundred only) to the respondent no.1 together with simple interest at the rate of 15% p.a. from the date of filing of the petition till realisation. Except this modification, rest of the award is maintained. No costs in the circumstances.

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